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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:

Implementation of the Local
Competition Provisions in the
Telecommunications Act of 1996

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CC Docket No. 96-98

COMMENTS OF 360° COMMUNICATIONS COMPANY

360° Communications Company ("360°"),¹ formerly Sprint Cellular Company, respectfully submits its comments regarding the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.²

I. INTRODUCTION AND SUMMARY

The *NPRM* seeks comment on how to implement Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act"),³ thereby "ending monopolies in local telecommunications markets."⁴ The Commission hopes that, "[b]y dismantling entry barriers and reducing the inherent advantages of incumbent LECs," the rules promulgated in this

¹ 360° is the second largest stand alone wireless company in the United States, providing wireless voice and data services to more than 1.6 million customers in nearly 100 markets across 14 states. These comments are addressed exclusively to the Commission's proposals for regulating the relationship between LECs and CMRS providers.

² FCC 96-182 (April 19, 1996) ("*NPRM*").

³ Telecommunications Act of 1996, Pub. L. No. 104-104, §101(a), 110 Stat. (1996) (to be codified at 47 U.S.C. §§ 251, 252).

⁴ *NPRM*, ¶ 14.

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proceeding will "establish a national process for enhancing competition, increasing consumer choice, lowering rates, and reducing regulation."⁵ As an advocate of increased competition and deregulation, 360° endorses the Commission's attempt to open the local exchange market to competition, thereby assuring that all consumers are provided with a greater variety of lower priced communications services.

In these comments, 360° discusses the applicability of Sections 251 and 252 on interconnection arrangements between local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers. First, 360° concurs with the Commission's tentative conclusion that "CMRS providers are not obliged to provide interconnection to requesting carriers under the provision of section 251(c)(2)."⁶ Second, the statutory guidepost for LEC-CMRS interconnection is Section 332(c), not Section 251. Section 332(c) is applicable because the 1996 Act left this section -- which specifically applies the requirements of Section 201 to LEC-CMRS interconnection -- undisturbed. Further, under Section 332(c), all CMRS providers are entitled to interconnect with the LEC network. This conclusion is mandated by the fact that Section 332(c), the doctrine of regulatory parity, and Commission precedent all require such interconnection. Finally, CMRS providers should not be regulated as "local exchange carriers" unless and until they begin offering local exchange service that is functionally equivalent to the

⁵ *Id.*, ¶ 24.

⁶ *Id.*, ¶ 167.

LECs' and are capable of exerting the type of anti-competitive market power that may require pro-competitive regulatory measures.

II. UNDER SECTION 251(C)(2), CMRS PROVIDERS ARE NOT OBLIGATED TO PROVIDE INTERCONNECTION TO REQUESTING TELECOMMUNICATIONS CARRIERS⁷

In its *NPRM*, the Commission tentatively concluded that, because the interconnection obligations of Sections 251(c) only apply to incumbent LECs, "CMRS providers are not obligated to provide interconnection to requesting telecommunications carriers."⁸ 360° believes this tentative conclusion is sound, both as a matter of law and as a matter of policy.

Legally, as pointed out by the Commission, CMRS providers do not fall within the statutory definition of "incumbent local exchange carrier" set forth in Section 251(h)(1). As non-incumbent local exchange carriers, such providers need not offer interconnection to requesting carriers. Thus, the plain language of Section 251 exempts CMRS providers from being required to interconnect with requesting carriers.

As a matter of policy, limiting interconnection obligations to incumbent local exchange carriers is harmonious with the Congressional scheme to establish a "pro-competitive, deregulatory national policy framework" for the telecommunications industry, and "open monopoly telecommunications markets to competitive entry."⁹ While requiring LECs to offer

⁷ This section is in response to *NPRM*, ¶¶ 166-167 ("Commercial Mobile Radio Services").

⁸ *NPRM*, ¶ 167.

⁹ *Id.*, ¶ 1.

interconnection upon reasonable request is consistent with the market conditions of the local exchange, requiring CMRS carriers to offer such interconnection is *not* consistent with the market conditions of the CMRS industry.

Specifically, under Section 332, the CMRS market, unlike the local exchange market, is highly competitive and largely deregulated. Section 332 prohibits states from engaging in either rate regulation or erecting barriers to market entry,¹⁰ and empowers the FCC to forbear from imposing many of its regulatory requirements on the CMRS industry.¹¹ In addition, CMRS carriers, unlike incumbent LECs, are not monopoly service providers. In fact, with the issuance of PCS licenses, there will be at least four two-way, real time voice CMRS providers per market¹² -- as opposed to a single incumbent LEC. For these reasons, 360° strongly concurs with the Commission's tentative conclusion not to subject CMRS providers to the same interconnection obligations imposed on LECs.

¹⁰ 47 U.S.C. § 332(c)(3)(A).

¹¹ 47 U.S.C. § 332(c)(1)(A).

¹² See, e.g., *Petition Of The Connecticut Department Of Utility Control To Retain Regulatory Control Of The Rates Of Wholesale Cellular Service Providers In The State of Connecticut*, FCC 95-199, ¶ 22 (May 19, 1995).

III. UNDER SECTION 332(C), NOT SECTION 251, ALL CMRS CARRIERS ARE ENTITLED TO INTERCONNECT WITH INCUMBENT LECS UPON REASONABLE REQUEST¹³

A. SECTION 332(C), NOT SECTION 251, GOVERNS LEC-CMRS INTERCONNECTION

The Commission also seeks comment on: (1) whether CMRS carriers are "requesting telecommunications carriers" for the purposes of Section 251(c)(2) interconnection to incumbent local exchange carriers; and (2) the relationship between the interconnection provisions of Section 251 and those of Section 332(c).¹⁴ As described in more detail below, CMRS providers are entitled to LEC interconnection upon reasonable request; however, the relevant statutory provision governing LEC-CMRS interconnection is Section 332(c), rather than Section 251.

Enacted in 1993, Section 332(c)(1)(B) unambiguously grants CMRS providers the right to interconnect with incumbent LECs under Section 201 of the Communications Act: "Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connection with such service pursuant to the provisions of section 201"¹⁵ The legislative history of this section further states that Congress "considers the right to interconnect an important one which the Commission shall seek

¹³ This section is in response to *NPRM*, ¶¶ 168-169 ("Commercial Mobile Radio Services").

¹⁴ *NPRM*, ¶ 168.

¹⁵ 47 U.S.C. § 332(c)(1)(B) (emphasis added).

to promote, since interconnection serves to enhance competition and advance a seamless national network."¹⁶ Thus, Section 332(c)(1)(b) is specifically crafted to address the unique issue of LEC-CMRS interconnection.

The 1996 Act leaves the regulatory scheme set up by Sections 332(c) and 201 to govern LEC-CMRS interconnection wholly intact. Congressional intent not to negate or alter Section 332(c) is stated directly in Section 253 of the 1996 Act,¹⁷ and can be inferred from the fact that the 1996 Act is primarily directed towards the local exchange market, not the CMRS market. Thus, the Commission's power to require LEC-CMRS interconnection continues to be governed by Section 332(c).

Furthermore, Section 253 of the 1996 Act negates state or local statutes or regulations that "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate service" while leaving Section 332(c) unaltered.¹⁸ Specifically, the prohibition of such barriers to entry emphasizes that "*[n]othing in this section shall affect the application of section 332(c)(3) to commercial mobile radio service providers.*"¹⁹ Such unambiguous language reflects a clear Congressional intent to leave Section 332(c) intact. Thus, Section

¹⁶ H.R. Rep. No. 111, 103rd Cong., 1st Sess. 261 (1993).

¹⁷ 47 U.S.C. § 253(e).

¹⁸ 47 U.S.C. § 253(a).

¹⁹ 47 U.S.C. § 253(e) (emphasis added).

332(c) should continue to serve as the guide to the Commission's authority to mandate LEC-CMRS interconnection.

B. ALL CMRS PROVIDERS ARE ENTITLED TO LEC INTERCONNECTION

Comment is sought on which "CMRS, including voice-grade services, such as cellular, PCS, and SMR, and non-voice-grade services, such as paging" should be eligible for interconnection with LEC networks.²⁰ The plain language of Section 332(c), the doctrine of regulatory parity, and prior Commission precedent all lead to the conclusion that all CMRS providers should be treated alike and provided interconnection to the LEC network.

Preliminarily, Section 332(c)(1)(B) states that "commercial mobile service" providers are entitled to "physical connection" with the LEC network, "upon reasonable request." Under Section 332(d), CMRS is defined as "interconnected" "mobile services," "provided for profit," and made "available to the public." Because all CMRS *must* fall within this definition, it would be contrary to Congressional intent for the Commission to deny interconnection to a particular class of CMRS providers.

In addition, the doctrine of regulatory parity demands that "similar services" be subject to "consistent regulatory classification."²¹ This doctrine mandates that, if LECs are required to interconnect with one type of CMRS provider, then they must also be required to interconnect with all types of CMRS providers. Even prior to the genesis of the regulatory

²⁰ *NPRM*, ¶ 168.

²¹ *Implementation of Sections 3(n) and 332 of the Communications Act*, 9 FCC Rcd 1411, ¶ 13 (1994) (*CMRS Second Report and Order*).

parity doctrine and the issuance of the *CMRS Second Report and Order*, the Commission has emphasized that its interconnection policies "apply to all public mobile service licensees, and not only to cellular carriers. Therefore, [the Commission's] policies and guidelines are equally applicable to the interconnection issues and negotiations involving non-cellular radio common carriers."²²

Finally, in its *CMRS Second Report and Order*, the Commission stated that as co-carriers, all CMRS providers are entitled to "reasonable interconnection."²³ In declaring that CMRS providers have such an interconnection right, the Commission saw "no distinction between a LEC's obligation to offer interconnection to Part 22 [cellular] licensees and all other CMRS providers."²⁴ Thus, 360° supports the conclusion that CMRS providers are entitled to LEC interconnection.

²² *The Need To Promote Competition and Efficient Use of Spectrum For Radio Common Carrier Services*, 4 FCC Rcd 2369, 2375 (1989) (*Interconnection Reconsideration Order*).

²³ *CMRS Second Report and Order*, ¶¶ 227, 232.

²⁴ *Id.*, ¶ 230.

IV. CMRS PROVIDERS SHOULD NOT BE CLASSIFIED AS LOCAL EXCHANGE CARRIERS NOR REGULATED AS SUCH UNDER SECTION 251(B) OR SECTION 251(C)²⁵

The Commission seeks comment on "whether, and to what extent, CMRS carriers should be classified as LECs and the criteria . . . that [it] should use in making such a determination."²⁶ 360° believes that Section 153 and sound policy considerations argue that at this time, CMRS providers should *not* be considered LECs.

Statutorily, it is important to note that, as a general rule, CMRS providers are not classified as local exchange carriers. That is, CMRS providers are generally exempted from the definition of "local exchange carrier" described in Section 153(44), except to the "extent that the Commission finds that such service should be included in the definition of such term." Thus, Congress intended that, unless there were sound policy reasons for doing otherwise, CMRS providers should be subject to a regulatory regime separate and distinct from that governing local exchange carriers.

As a matter of policy, CMRS providers currently operate in a fully competitive market. If, in the future, CMRS carriers begin providing services that are functionally equivalent to local exchange services, and, in doing so, also obtain an anti-competitive market power over such services, then the Commission may choose to reevaluate its regulations. Until such a time,

²⁵ This section is in response to *NPRM*, ¶ 195 ("Obligations Imposed on Local Exchange Carriers by Section 251(b)").

²⁶ *NPRM*, ¶ 195.

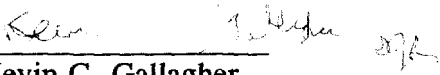
however, CMRS providers should neither be classified as, nor regulated as, local exchange carriers.

V. CONCLUSION

360° endorses the Commission's strong commitment to a deregulated, competitive local exchange marketplace. However, in providing for increased local exchange competition, the Commission should continue its successful policy of CMRS deregulation. Specifically, CMRS providers must not be obligated to offer interconnection to requesting carriers, and Sections 332(c) and 201, rather than Section 251 must guide the Commission's decisions regarding LEC-CMRS interconnection. In addition, the Commission must continue to ensure that all CMRS providers have access to the LEC network, and that CMRS carriers are not defined and regulated as LECs unless and until they begin to serve as the functional equivalent of local exchange carriers and obtain the type of market power that may require pro-competitive regulation. 360° respectfully reflects the Commission to adopt policies reflecting these comments.

Respectfully submitted,

360° COMMUNICATIONS COMPANY



Kevin C. Gallagher
Senior Vice President --
General Counsel and Secretary
360° Communications Company
8725 West Higgins Rd.
Chicago, IL 60631
(312) 399-2348

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